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Reactions of the Agencies of Social Control to Crimes of Young Foreigners in the Federal Republic of Germany[1]

Increasing resident alien juvenile offenders have created problems in West Germany for both the criminal justice system and the offenders. A comparison between German and non-German offenders in several German states is presented along with an analysis of legal responses to resident alien offenders.

By Peter-Alexis Albrecht, Christian Pfeiffer, and Klaus Zapka

Goals and Objectives

Over 1 million foreign children now live with their families in the Federal Republic of Germany. The number of newborn foreign children—in some regions every second baby—is rising steadily. Already, politicians and sociologists are referring to this second generation of foreigners from the lower socioeconomic strata as a "marginal group," "outsiders," and a "hopeless generation."

However, there are no empirical studies to support these statements. This research project concentrates on the following unexplored aspects of alien criminology:

- Whether and how much the criminal activity of young foreigners differs from that of young Germans.
- How immigration offices deal with the criminal behavior of aliens.
- How alien delinquents are treated in German juvenile courts and correctional facilities.
- How probation officers assist foreign probationers.

"Reaktionen sozialer Kontrollinstanzen auf Kriminalitaet junger Auslaender in der Bundesrepublik" (NCJ 60810) originally appeared in Monatsschrift fuer Kriminologie und Strafrechtsreform, vol. 5, no. 61, October 1978. (Carl Heymanns Verlag KG, Gereonstrasse 18-32, 5 Cologne 1, Germany) Translated from the German by Sybille Jobin.

[1]Editor's note: There is also a book-length analysis of this subject. See: Albrecht, P.-A. and C. Pfeiffer: Die Kriminalizierung junger Auslaender. Befunde und Reaktionen sozialer Kontrollinstanzen. (NCJ 58799) Munich, Junta Verlag, 1979. (The Criminality of Young Foreigners. Results and Reactions of Social Control Agencies)

Study Methods

For this study, one city with a high percentage of foreign inhabitants was selected from each of the 11 German states. In Kiel, Hamburg, Bremen, Hannover, Frankfurt, Berlin, Cologne, Mainz, Saarbruecken, Stuttgart, and Munich, immigration officials, representatives of the Association for Juvenile Court Assistance (Jugendgerichtshilfe), and probation officers were given a semistandardized questionnaire. In addition, wardens of at least one juvenile correction institution in each state were interviewed. These interviews, usually conducted in groups, were taped in February, March, and April 1978.

Comparative Analysis of Criminal Statistics[2]

Each state's Bureau of Criminal Investigations supplied statistics on German and alien suspected offenders, from which the crime rate per 100,000 inhabitants (German and foreign) in each city was computed. Only Frankfurt, Stuttgart, and Munich (the cities with the largest foreign populations) are considered here.

Statistical analyses were made for both overall crime rates (i.e., all offenses, all age groups under 21) and for specific age groups. The overall analyses showed several trends, common to the three cities represented in this study, during the period 1973 to 1977. For example, the early figures for Stuttgart show that there were about 4,000 suspected foreign offenders per 100,000 and

[2]The original German article contains extensive charts and graphs.

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roughly 2,500 German. By 1977, the difference had narrowed until both groups had some 3,000 suspected offenders, with the foreign crime rate slightly lower than the German. The crime rate during this period rose for Germans and declined for foreigners. This phenomenon is partly explained by the increasingly high percentage of very young alien children, an age group of little criminal activity.[3]

The specific age group analyses show some important differences. Germans and aliens in the youngest age group continue to have similar crime rates. However, aliens between the ages of 14 and 21 have a strikingly higher crime rate than their German counterparts, by 58 percent in Stuttgart, 43 percent in Munich, and 32 percent in Frankfurt. It was also found that the crime rate increased most for aliens between the ages of 14 and 18, and that it was considerably higher than that of Germans of this age group. There also was the greatest difference in the crime rate between the two groups in this particular age group than in any other.

These results are particularly significant because alien adults have shown an overall lower crime rate than their German counterparts.

Possible Explanations for the Differences in Crime Rates

One explanation for the low crime rate of foreign children might be that they do not fully experience social failures and frustrations until about the age of 14 because of the influence of the family as the dominant integrating and controlling force. Social workers also note that foreign children are raised very strictly. According to a Berlin probation officer, "the parents are worried about losing their jobs and their source of income. In some cases their punishments are extremely rigorous." Sociologists support this statement. Empirical research shows that alien children have less say in family decisions and their own concerns than children of the German lower class.

Conflicts begin to develop when the child enters the German environment through schools and vocational contacts. At this point, opposing attitudes are manifested. The parents still have close ties to their native country while the children adopt the norms of German society. Lacking a fixed frame of reference, adolescents suffer from insecurity and a loss of direction. Neither foreign nor German, they are unable to properly develop their social identity.

The greatest strain occurs during the transition to professional life, when aliens first become aware of discrepancy between their aspirations and their actual social prospects. The lack of opportunity aggravates their identity problem and frequently leads to crime.

In the future, an increasing number of children born of foreigners in Germany will reach the critical age group and turn to crime if attempts to integrate them into German society continue to fail. Unfortunately, this new generation will lack the mechanisms for coping and rationalizing possessed by children who had known and lived in their native country. Those children had a clearly defined cultural identity and sense of allegiance to their native country that better enabled them to deal with discrimination. As a last resort, those children could return to their native land—an alternative unacceptable to foreigners born and reared in Germany.

[3]Translator's note: A decline in the German birth rate during this period is implied here.

The Alien Law

West German alien law states that foreigners convicted for a crime may be deported. This "may" clause gives immigration officials considerable latitude in their decisions, over which other legal authorities find it difficult to exert control.

Inquiries showed that a quantitative analysis of deportation practices would hardly be possible. To bypass the complicated deportation procedure, immigration officers may resort to such indirect measures as denying renewal of residency permits or "persuading" aliens to return to their own country. A Hamburg immigration officer reports, "We try to convince alien criminals that it is in their own interest to leave and that there is no room for them here."

Immigration officials said they find the length of the alien's stay in Germany and the presence of other family members to be important factors in deportation decisions. Education, job opportunities, the severity and conditions of the offense, and the "extent of social integration" also are considered. Judges' recommendations, which sometimes include the specific request not to alter the offender's residence status, are seldom heeded. Similarly, the advice of social workers (Juvenile Court Assistance, Probation Assistance) is rarely solicited.

"As a rule, these institutions are so unreasonable that I don't bother to ask their opinion," one immigration officer explains. "They are so much in favor of aliens that I know beforehand what they are going to say....They believe that every alien has a right to be rehabilitated in Germany. But they can just as well be rehabilitated somewhere else, so that we don't need to take the risk."

The clash between German criminal law (aimed at rehabilitation) and alien law (aimed at the offender's exclusion from society) is reflected in opinions of the various authorities involved in deportation decisions. Immigration officials believe their decisions are favorable to aliens, but representatives of Juvenile Court Assistance and Probation Assistance tend to deplore the readiness of these officials to deport foreigners. These disagreements should not be seen as expressions of ill will on the part of either; they are built into the present legal structure and can be altered only through a revision of these laws.

Juvenile Courts

Cultural and linguistic differences present the major difficulty in trying young aliens. For instance, communication between the judiciary and the offender's parents is complicated by the language barrier. Even

more important, German judges and juvenile court assistants (who present case backgrounds) have trouble understanding the relevant social factors and motives behind an offense because they are not familiar with the mentality, child-rearing practices, and sociocultural background of foreign families. In addition, foreigners fear and distrust court authorities and often refuse to give detailed information for fear of deportation. As a result, only the most obvious and superficial facts—date of arrival in Germany, education, etc.—are presented at the trials.

Some of the juvenile court assistants emphasize that the judges really make an effort to inquire into the background of an offense but that these judges often become discouraged by the impossibility of procuring information. Other assistants, however, felt that the judges were too eager to base a sentence on their own moral criteria without considering the socioeconomic conditions that led to the offense.

Cologne, Munich, and Frankfurt recently have attempted to solve the communication problem. Members of organizations for foreigners investigate the foreign offender's social environment and prepare and present court reports in collaboration with German social workers. So far, the results of this experiment have been good.

Verdicts of Juvenile Courts

The testimony of juvenile court assistants revealed two trends in verdict severity. First, young foreigners charged with minor offenses generally receive rigorous penalties (i.e., juvenile detention).[4] Therapeutic measures—counseling, placing an offender under a social worker's supervision—are rarely imposed because of problems in dealing with the offender's family and a lack of qualified personnel. Because some judges consider them a high escape risk, young aliens are often placed on preventive detention; then, to justify the strictness of the pretrial measures, such offenders are sentenced to correctional facilities.

The other trend is for judges to impose relatively mild sanctions for severe offenses, especially if the accused has grown up in Germany, to forestall deportation.

Juvenile Correctional Institutions

The study revealed the disturbing conditions of foreign delinquents confined to institutions. Lack of education and vocational training (99 percent have no job training) handicap their position from the outset. Their marginal status also subjects them to prejudice and discrimination by German inmates. Wardens speak of "defamation," "aggression," and "lack of respect" for foreign inmates, and a full-fledged pecking order which allows German inmates to "feel superior at least to somebody." In order to survive, different nationalities organize gangs—a practice which is sometimes encouraged by prison management.

Despite the disadvantages young aliens experience in the correctional process, officials emphasized that young aliens cause few problems. In fact, the majority of prison personnel indicated that foreigners behave better than Germans. Wardens stressed that, unlike native inmates, aliens usually maintain close relations with their families during confinement.

Deportation Following Confinement

Positive evaluations given by the correctional facilities rarely seem to influence immigration officers, as most German states deport aliens immediately upon release. In states with the highest deportation quotas (Hamburg and Bremen, nearly 100 percent of all offenders; Rheinland-Pfalz, 95 to 97 percent), wardens report bitterly that immigration officials do not give delinquents a chance to be rehabilitated in Germany, although their prospects in their homeland are far worse. Especially reprehensible is the officials' practice of using money the alien earned in prison to pay for his return trip.

Therapy

The rigorous practice of deportation is contrary to any concept of therapy; the correctional goal is not reintegration into society but final exclusion. Most wardens readily admit that, since alien inmates usually lack the educational prerequisites to profit from prison training programs, they are, as a rule, merely locked away. To add to these difficulties, immigration offices feel that any relaxation of confinement conditions would constitute an added escape risk.

Probation Assistance

Comparatively few foreigners reach the probation stage, in part because they are deported first. Those who are considered for probation usually have good command of German. However, probation officers report difficulties in gaining a client's confidence, a problem attributed to a difference in mentality and a profound distrust of German authorities. A model in Berlin, therefore, employs honorary alien advisers who mediate between delinquents and social workers.

Behavior During Probation

Strikingly, the recidivism rate of alien probationers is lower than that of Germans. Some probation officers attribute this to the more rigorous selection process for alien probationers. Close family ties and fear of deportation are mentioned as other reasons for the aliens' exceptional cooperation. Officers emphasize that aliens are better motivated and more willing to work and to comply with obligations imposed by the courts. This behavior is all the more remarkable since their social prospects are far gloomier than those of German

[4] This disciplinary measure involves short-term imprisonment and does not go down on the offender's record.

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probationers. In addition to the lack of educational and vocational opportunities, foreign probationers also have trouble obtaining work permits. As a rule, foreigners are allowed to work only if they possess a residence permit, something rarely issued to alien probationers. Even if aliens are not deported, they usually are only "tolerated," and not permitted to work. As a result, up to 70 percent of alien probationers are unemployed.

Judicial Treatment of Probationers

Most of the persons interviewed agreed that judges usually attempt to understand the plight of foreign probationers. Their sympathy is evident in court opinions that regard probation as a real chance for social reintegration, and in their tolerance of problems which develop during probation. In addition, social workers emphasize their own role in gaining understanding for their clients.

When juvenile judges see a real possibility for rehabilitation, they have been known to negotiate with immigration officers. However, the success of these negotiations is minimal because immigration officers have their own criteria. "The courts today are more progressive than the immigration offices," says one interviewee. "The courts try to take a foreigner's social situation into account—the immigration services could care less."

Conclusions

For the majority of young aliens living in Germany, a return to their homeland is virtually impossible; many of them are "German" by acculturation and have a right to be treated as such. Unfortunately, developing measures to ease their social integration is a slow process, primarily because of the lack of a clear political stand in favor of alien integration on all levels (nursery schools, job training, education, etc.). The aliens' marginal position, made worse by their uncertain residence status, renders futile any meaningful planning for the future.

Recommendations

(1) The German alien law needs revision—at least regarding those aliens already living in Germany. In particular, the policy of deporting criminal aliens must be reformed. Legislators must eliminate the present incompatibility between alien law and criminal law. One step in this direction is the "Duesseldorf Reform Program," which limits deportation to a few clearly defined offenses.

(2) Political and administrative authorities must ensure that the immigration service's power of decision is used in the best interests of those concerned.

(3) These powers could be limited by the immigration officers themselves, and cooperation between them and social agencies could be improved.

(4) The study indicates that social agencies on the whole are willing to cooperate. Problems in communication between court authorities and aliens are being solved or (as in Frankfurt, Munich, and Cologne) have been solved through the use of foreign advisers.

(5) Juvenile judges, who generally keep an open mind to aliens, should collaborate with alien and juveni' organizations in devising meaningful (i.e., rehabilit tive) forms of punishment.

(6) An alien's uncertain residence status hinder: rehabilitation efforts. If released aliens were allowed to stay in West Germany, officials would have greater incentive to develop special programs.

(7) More consideration should be given to cooperation models such as Berlin's (one probation officer/one alien advisor) for dealing with probation problems.

(8) Enlightened legislation is a prerequisite for successful probation. To deny a work permit because the alien has no residency permit betrays a lack of political insight characteristic of the treatment that "guest workers" receive in Germany.

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